IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1911 OF 2004

IN

SUIT NO. 1825 OF 2004

M/s. Amve Hospitality
Pvt. Ltd. ..Plaintiff

versus

Ulhas Mhatre & Ors. ..Defendants

Mr. Vivek Walawalkar i/b. S.G. Walam for the Plaintiff.
Mr. M. R. Phal for the Defendant No.1.
Mr. S. Viegas for the Defendant No.2.

CORAM : D. G. DESHPANDE,J.

DATE ; 20TH SEPTEMBER, 2004.

P.C. :

. Heard Advocate for the Plaintiff and Defendant No.1 and Defendant No.2. Prayer (c) in the notice of motion is for appointment of Receiver of certain property mentioned as Plot bearing No. 63, 'C' Wing of Mulshi Co-op. Hsg. Soc. Ltd. Gorai, Borivali (W), Mumbai. Inspite of his best efforts advocate for the plaintiff could not point out either from the pleadings or the documents that

the defendant No.1 is the owner of this property mentioned in prayer clause (c). The property admittedly belongs to the defendant No.2 society and even if some work of construction is given to the defendant no.1 by the society, that does not give any right to the plaintiff to seek Receiver in respect of the property of the society. There is no privity of contract between the plaintiff and the defendant No.2. Advocate for the Plaintiff admits that defendant No.2 is joined as a formal party. Therefore, relief (c) cannot be granted.

. So far as prayer (a) is concerned, that is decree on admission. Advocate for the Plaintiff drew my attention to Exhibit I-2, which is a letter written by the defendant No.1 admitting his liability of Rs.2 to Rs.2.5 lacs. My attention was also drawn to Exhibits H-1 and H-2 which are receipts for Rs.50,000/= and Rs.1,00,000/= and also to Exhibit H-3. Further Advocate for the plaintiff fairly concedes that all these receipts have been referred to and taken into consideration while writing Exhibit I-2. Therefore admitted claim of the defendant No.1 is only Rs.2 to Rs.2.5 lacs. There can be decree only in respect of that amount against the defendant No.1. Therefore, defendant No.1 is directed to deposit Rs.2.5 lacs in the court within eight weeks from today without prejudice to his rights and contentions raised in the suit.

. Notice of Motion is disposed of.

*****